

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 375 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

PATHAN NIZAMKHAN FAIZADINKHAN

Versus

LEGAL HEIRS OF DECEASED GULAMALI ASRAFALI

Appearance:

MR PK JANI for Petitioner

MR VC DESAI for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 03/07/97

ORAL JUDGEMENT

1. The petitioner is the original plaintiff and the respondents are the original defendants. It appears that petitioner - plaintiff instituted Regular Civil Suit No.25 of 1990 in the court of Civil Judge, Junior Division, Visnagar against the defendants claiming to be the tenant of the defendants thereby restraining him from evicting the petitioner without due process of law. He

also filed application for ad interim injunction which was initially granted by the learned trial judge being Civil Judge, Junior Division, Visnagar, on 8th of April, 1990. In the suit he inter alia contended that his brother Yakubkhan was the tenant of the premises since last 29 years at a monthly rent of Rs. 10 and that he was in possession of the suit premises along with his brother. Even an affidavit to that effect was filed by said Yakubkhan.

2. The said application for injunction was resisted by the respondents - defendants admitting therein that Pathan Yakubkhan Rasulkhan was the tenant who has surrendered the premises and left for Ahmedabad and that the present petitioner was never in possession of the premises.

3. The Civil Judge, Junior Division, on appreciation of the factual evidence produced before him as well as documentary evidence, by order dated 29th November, 1990, dismissed the application for injunction at Exhibit 5 and vacated the ad interim injunction.

4. Being aggrieved by such order, the present petitioner preferred Civil Misc. Appeal No. 166 of 1990 in the District Court at Mehsana and Third Extra Assistant Judge, Mehsana, by its judgment and order dated 27th November, 1990, dismissed the said appeal and confirmed the order passed by the trial court.

5. It is such order of the Third Extra Assistant Judge, Mehsana, confirming the order of Civil Judge, Junior Division, which is under challenge before this court. Two courts have concurrently found that the petitioner plaintiff has failed to establish his prima facie case for injunction and he has also failed to establish that balance of convenience would be in his favour or the greater hardships will be caused to him if the injunction as prayed is not granted.

6. In this Civil Revision Application, Mr. P.K. Jani, learned counsel appearing for the petitioner assailed the findings of the two courts below and tried to convince the court to interfere and to protect his possession which is hitherto protected by the learned Single Judge of this court vide order dated 13th March, 1992. Mr. Viresh C. Desai has submitted that in fact two courts below have not found the present petitioner plaintiff to be in possession and has therefore dismissed the application for injunction and consistent with the decision of the Apex Court in the case of HINDUSTAN

AERONAUTICS v. AJIT PRASAD reported in 1973 SC 76, this court should not interfere with the concurrent findings of facts reached by two courts below especially when no jurisdictional error is pointed out. I agree with the submission of Mr. Desai and I do not find any substance in the submission made by Mr. P.K. Jani, learned counsel appearing for the petitioner. Hence, the Civil Revision Application is dismissed and ad interim relief granted by the learned single judge of this court is vacated. Rule is discharged with no order as to costs.

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